

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA *et al.*,

Plaintiff,

Case No. 4:05-CV-329-JOE-SAJ

v.

TYSON FOODS, INC *et al.*,

Defendants,

and

PETERSON FARMS, INC., *et al.*

Third-Party Plaintiffs,

v.

BRIAN R. BERRY d/b/a TOWN BRANCH GUEST
RANCH, *et al.*,

Third-Party Defendants.

MOTION FOR ESTABLISHMENT OF A DATE
BY WHICH PLAINTIFF MAY MOVE TO STRIKE
OR OTHERWISE RESPOND TO THIRD PARTY COMPLAINTS

COMES NOW Plaintiff, State of Oklahoma ex rel, W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, et al. ("Plaintiff"), pursuant to Fed.R.Civ.P. 7(b) and Local Civil Rule 7.1, and moves the Court to establish a date by which the Plaintiff may move to strike or otherwise respond to the Third Party Complaints filed on October 4, 2005, at Dockets No. 80 and 82. In support of its Motion, the Plaintiff respectfully submits the following:

1. Defendants Peterson Farms, Inc., Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Willow Brook Foods, Inc., George's, Inc., George's Farms, Inc., and Simmons Foods, Inc., filed Third Party Complaints against approximately 160 other persons or entities on October 4, 2005, at Docket No. 80.

2. Defendant Cargill Turkey Production, LLC, filed a Third Party Complaint against the City of Tahlequah and the City of Westville on October 4, 2005, at Docket No. 82.

3. Rule 14 of the Federal Rules of Civil Procedure provides that "any party may move to strike the third party claim, or for its severance or separate trial."

4. Rule 14 of the Federal Rules of Civil Procedure does not establish a time period for the filing of such responsive pleadings to third party complaints.

5. To date, no summonses to the named Third Party Defendants have been issued.

6. Because it will significantly impact the Plaintiff's case, it is the intent and desire of the Plaintiff to file a responsive and timely pleading to the Third Party Complaints as provided for by Rule 14 of the Federal Rules of Civil Procedure.

7. Various courts have treated such responses to third party complaints as either timely filed or untimely filed depending upon the facts of the individual case, but no specific criteria for making this determination have been established.

8. Because of the ambiguity which exists with respect to what would constitute a timely filing by an original plaintiff to a third party complaint, the Plaintiff requests that the Court establish a date by which any such pleading may be filed in this case.

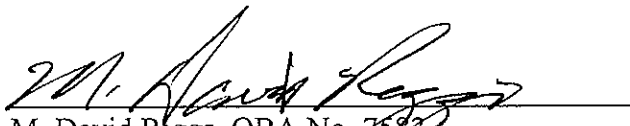
9. Plaintiff proposes that a motion to strike or other responsive pleading filed by Plaintiff within thirty (30) days from the date of the filing of this Motion would be reasonable

and would not impact other deadlines, would not otherwise adversely affect the progress of the proceedings and would not prejudice the rights of other parties.

10. Opposing counsel do not object to this motion.

WHEREFORE, premises considered, the Plaintiff prays that the Court establish the date of November 21, 2005, as the date by which the Plaintiff may move to strike or otherwise appropriately respond to the Third Party Complaints filed by Defendants on October 4, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. David Riggs", is written over a horizontal line.

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ATTORNEYS FOR PLAINTIFF
THE STATE OF OKLAHOMA

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

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A handwritten signature in black ink, appearing to read "M. David Hogg", is written over a horizontal line.